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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re

DONALD NANCE DBA
CELLULAR TECHNOLOGY GROUP

Petition for reconsideration on
Part 22 of the Commissions Rules

To: FCC COMMISSIONER

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DEC 19 1994

FCC MAIL ROOM

PETITION FOR RECONSIDERATION

December 14, 1994

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I. PRELIMINARY STATEMENT

Cellular Technology Group fully agrees with the wording in 22.919. However, we disagree with most of paragraphs 54 to 63. The following discussion and comments will clarify our positions relevant to change for those paragraphs.

II. COMMENTS ON THE DISCUSSION SECTION

a. 54. Proposal. We do not agree that the mere act of changing the ESN of a cellular phone causes fraudulent use. The intent for misuse by the user must accompany the changing of the ESN. Nor do we agree that an ESN in a cellular telephone assists, to any great extent, in recovering a stolen phone. Underground

operators will avail themselves of the latest technology to change any identifying information on a stolen phone. When the phone resurfaces, if ever, it will not be identifiable by any means. These operators will not be deterred by any FCC rule but will profit because of it as they can now charge more for their trade. There is sufficient law available at present to prosecute any individual who steals airtime and long distance tolls. We do not agree that any rule change will deter illegal ESN transfers.

b. 55. Comments. None of the manufacturers nor the FCC or CTIA acknowledged that there are millions of AMPS compatible cellular phones in use and available today that do not meet the original type acceptance standard in OST bulletin 53. Irregardless of part 22.919 rules, underground operators have an unlimited supply of older phones. And even though the FCC mandated that "attempts to change the serial number circuitry should render the mobile station inoperative", manufactures for the most part have ignored the directive completely. It appears that this was "window dressing" to intimidate legitimate emulation firms while the "big boys" manufactured phones as usual. We agree that the ESN's should be capable of being changed in the field. However, we do not agree that it should be confined to the manufactures authorized shops. We feel that we should also be afforded the ability to compete for this business and provide this service for the legitimate cellular customer.

c. 56. No comment.

d. 57. No points brought to the FCC concerning C2+ were addressed. We feel that these points should have been given consideration and that lack of consideration deprives the public of a viable alternative for a dual line system. Also, having read the Erickson comments we found no reference that Erickson was opposed to the C2+ encryption device.

e. 58. Discussion. We found no case presented by CTIA or others that a rule change would deter theft of cellular airtime or long distance toll access.

f. 59. We respectfully disagree with the commission. We feel that a second cellular phone on the same number does create an extension phone similar to a wireline extension. Extension by example:

	Wireline	Cellular
ALL LOCAL CALLS FULLY BILLED	YES	YES
ALL LONG DISTANCE FULLY BILLED	YES	YES
INTERNATIONAL CALLS FULLY BILLED	YES	YES
ONLY ONE CALL PLACED/RECEIVED AT ONCE	YES	YES
ABILITY TO CALL OTHER EXTENSION	NO	NO
SINGLE NUMBER FOR BOTH PHONES	YES	YES
RINGS ON EACH UNIT	YES	YES

Other than the ability to have a conference call, there are few differences between the two, except what the carriers want to charge. Carriers want to charge between \$20 to \$30 per month for a phone that is fully billed for airtime and long distance. This continues for the life of the phone or the contract with the user. An example over a five year period, between what the carrier charges and what we charge as a one time emulation fee demonstrates the gross overcharge to the consumer via the carriers method. Example: An extension phone service provided by the carrier would cost the consumer (using \$25 per month as the mid-range) would cost the consumer \$1500 (60 months X \$25). Our one time fee is \$150. The difference is 10 fold for cost alone. Not included is the ability for our customer to roam with the extension phone we emulate for him. We agree that the cellular system cannot distinguish between two phones on the same MIN/ESN, however, this is also true of the wireline network as well. We feel this is as it should be and do not see why this is a problem as long as the extension unit is being fully billed for airtime and long distance access.

g. 60. We find this paragraph to be in direct contradiction to paragraph 61. In this paragraph it states it is permissible to have duplicate MIN/ESN's if the carrier approves. Paragraph 61 prohibits ANY change of an ESN. We are not so naive to believe that any carrier will hand millions of dollars or revenue to small companies such as ours when they can exert pressure through

the CTIA to fight any attempt at outside parties providing extension phones. A prime example of this is AT&T and Bell in the 1960's and 1970's. Even though now AT&T (and Bell) aggressively market extension phones to the public in a fair and competitive atmosphere.

60 (1). We know of no legitimate incidence of non-billing for two cellular phones being used simultaneously. Any we can not find any reason that a licensee's permission, if erroneous tracking and billing is the issue, could in any way eliminate such erroneous tracking or billing.

60 (2). Previous law, including Carterphone/Hush-a-phone and more recently FCC and court rulings on cable TV decoder boxes have found that the service provider can not charge (except for cost) for extension devices. We are confident that a neutral third party, such as a court, would rule that carriers are only entitled to revenue based on wireline access such as use of the telephone number, airtime and long distance access -- not revenue based on the number of extension phones that a customer might own and have turned off the majority of the time.

60 (3). We respectfully disagree with the Commission that by altering a few bytes of data, after type acceptance, in any way affects the operation of that transmitter.

The only way it could be remotely considered illegal is if it caused third party interference or some other harm. It is difficult to reason, in the case of two identical phones, how one phone could be licensed and the other an illegal transmitter just because one had been reprogrammed in the field. Since all cellular phones are owned by the subscriber, it would seem that the subscriber could modify their phone in any manner that would not cause harmful interference to the system. We are aware of no data that supports any conclusion that extension cellular phones have caused any such problem.

h. 61. We respectfully disagree with the Commission. With respect to software to change ESN's becoming available via private "Bulletin Boards", anyone in the business is aware that this software is already abundant and with the millions of phones that are ready alterable, using this software, it is totally unfeasible to prevent unauthorized use of such software for fraudulent purposes. We believe it is in the consumers best interest to have the ability to have cellular ESN's overwritten, modified or transferred for legitimate reasons such as having a phone repaired or an extension phone.

i. 62. It appears that the Commission, contrary to their own Rules, does not propose to take any action against the manufacturers who have produced some 20 millions of AMPS phones

that do not meet the old FCC rules. Instead it appears that the comment is to be applied retroactively against the hundreds of thousands of phones that have been changed for legitimate purposes. We feel, that if these new rules are to be implemented, to be fair and consistent, that type acceptance should be withdrawn from all phones that have and can have their ESN changed. We feel that any rules or guidelines that are retroactive, selective and result in a anti-competitive process are unfair and such rules should not be implemented or allowed.

III. RECOMMENDATIONS

After careful consideration of the Commission's Rules, we recommend the FCC let stand rule 22.919.

As far as existing phones, we recommend the following changes that allow ESN's to be changed in the field, providing the following steps are adhered to:

- a. An agreement must be signed by the subscriber to the service who wants the change made. The agreement will note the identifying information on both phones and reflect the changes to be made. The subscriber must provide identification in the form of a drivers license or approved ID and a copy of his present cellular service agreement or current bill. This agreement will be held on file for a minimum of 3 years.

b. The phone should have a permanent tag attached that identifies the old ESN, the new ESN, the date and the name and address of the company making the change.

c. The carrier can be notified by the firm doing the ESN change or the customer that there are two or more phones with the same ESN operating on the assigned number. This provides the carrier with information on how many phones are being used, should any problem arise. This is the same requirement that is in place for wireline today. Should the carrier be notified, the carrier cannot deny access or levy any additional charge because of the ESN change.

d. All transmitters modified must be type accepted and the ESN/MIN change is the only modification allowed.

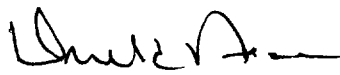
IV. IN CONCLUSION

We believe that these recommendations will protect the network so that legitimate users can have access to the best service at the lowest possible cost. In addition, it will provide additional revenue to the carriers in the form of higher airtime usage. Nothing will stop the person who is bent on fraud and has the technical know-how to circumvent the governing authority. The only person injured as a result of the proposed

rules is the legitimate customer and the small firms who have worked hard to develop the technology to effect the ESN change and who employ reasonable care in dealing only with the legitimate customer. We ask you to give fair and impartial consideration to our petition and decide in the interest of fairness for all.

Respectfully submitted,

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